IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

OP.No. 17641 of 1999(A)

PETITIONER:

K.E. RAMESH BABU,
HIGH SCHOOL ASSISTANT,
CHOVVA HIGH SCHOOL,
P.O. CHOVVA, KANNUR DISTRICT.

BY ADV. SRI.P.M.PAREETH

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

3. DEPUTY DIRECTOR OF EDUCATION,
KANNUR, KANNUR DISTRICT.

4. DISTRICT EDUCATIONAL OFFICER,
KANNUR, KANNUR DISTRICT.

5. MANAGER, CHOVVA HIGH SCHOOL,
CHOVVA P.O., KANNUR DISTRICT.

6. C.P. AJITHA, HIGH SCHOOL ASSISTANT,
CHOVVA HIGH SCHOOL,
P.O. CHOVVA, KANNUR DISTRICT.

7. T.K. RUBY, HIGH SCHOOL ASSISTANT,
CHOVVA HIGH SCHOOL, P.O. CHOVVA,
KANNUR DISTRICT.

8. *MAHESWARI PRASAD K.N.,
HIGH SCHOOL ASSISTANT,
CHOVVA HIGH SCHOOL, P.O. CHOVVA,
KANNUR DISTRICT.

* (NAME AND ADDRESS OF R8 CORRECTED AS PER ORDER DATED 8.9.99 ON C.M.P.NO.37356/99 AS
BABU MAHESWARI PRASAD K.N.
HIGH SCHOOL ASSISTANT, GOVT. HIGH SCHOOL, KANNADI PARAMBA,
KANNUR DISTRICT)

BY ADV. SRI.E.V.NAYANAR
SRI.PARTHASARATHY
SRI.O.V.RADHAKRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.17641 OF 1999.

ORDER ON C.M.P.NO.28851 OF 1999 IN O.P.NO.17641 OF 1999
DISMISSED

4.9.07. SD/- S. SIRI JAGAN, JUDGE.

APPENDIX

EXT.P1: TRUE COPY OF THE APPOINTMENT ORDER DATED 18.8.92 ISSUED BY THE 5TH RESPONDENT.

EXT.P2: TRUE COPY OF THE ORDER NO.K.DIS/61671/95/EM3/DPI/DATED 27.1.96 ISSUED BY THE 2ND RESPONDENT.

EXT.P3: TRUE COPY OF THE REVISION PETITION DATED 8.10.1996 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P4: TRUE COPY OF THE GOVERNMENT ORDER DATED 21.6.1999 NO.G.O.(RT) NO.2816/99/G.EDN.

EXT.P5: TRUE COPY OF THE CIRCULAR NO.H2-42115/84 DATED 13.5.85 ISSUED BY THE 2ND RESPONDENT.

EXT.P6: TRUE COPY OF THE ORDER NO.G.O.(RT)NO.3056/94/G.EDN.DATED 10.8.94 ISSUED BY THE 1ST RESPONDENT.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

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O.P. No. 17641 of 1999

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Dated this, the 4th September, 2007.

J U D G M E N T

The petitioner was appointed as H.S.A.(Social Studies) in the 5th respondent's school, by Ext.P1 appointment order with effect from 18.8.1992 in the vacancy which arose on account of one Smt.. K. Nalini being promoted as Headmistress with effect from 1.4.1992. However, in Ext.P1 order that appointment was approved by the D.E.O. with effect from 18.8.1992 to 31.3.1994 without eligibility for vacation salary during the year 1992-93. Aggrieved by the same the petitioner filed an appeal before the Director of Public Instruction which was disposed of by Ext.P2 order holding that although the petitioner is entitled to continue up to 14.7.94, the petitioner is not eligible for vacation salary for the year 1992-93 as his continuous service as on the closing date of academic year 1991-92 was less than eight months. Ext.P3 revision filed by the petitioner before the first respondent was also rejected by Ext.P4. The petitioner is challenging Exts.P1, P2 and P4 to the extent it denies to the petitioner vacation salary for the year 1992-93. The petitioner's contention is that the petitioner was appointed against the vacancy arising on account of Smt. K. Nalini being promoted as Headmistress and therefore the same being a regular vacancy and since Rule 49 of Chapter XIV of the

K.E.R. applies only to temporary vacancies, requirement of eight months continuous service is not applicable to the petitioner's case.

2. The 1st respondent has filed a counter affidavit in which the contention is that although Smt. K. Nalini was promoted as Headmistress on 1.4.1992 for the year 1992-93 there was a division fall and consequent reduction of one post and therefore the vacancy which arose on account of the promotion of Smt. K. Nalini could not have been filled up. However, by G.O.(Rt)No.560/95/G.Edn. Dated 17.2.95 one additional division in English medium High School Section was sanctioned for the years 1992-93 and 1993-94 to which alone the petitioner was accommodated and therefore that post being temporary for two years, the petitioner could not have claimed vacation salary for the year 1992-93. The contention is that the post being temporary, vacation salary could not have been sanctioned since the petitioner did not have 8 months service before the end of the academic year.

3. The petitioner raises another contention that since the counter affidavit specifically stated that in Social Studies there were only 9 teachers as against 11 for Mathematics and 23 for Science, clearly subject ratio was not satisfied and therefore the petitioner was entitled to be accommodated to one post of Social Studies.

4. The legal position regarding payment of vacation salary is not disputed. Going by Rule 49 of Chapter XIV of the K.E.R. the vacation salary could have been given in a temporary post only if the

period of the vacancy is for a continuous period of eight months prior to the close of the academic year. Therefore, the petitioner would succeed in getting vacation salary only if he proves that the vacancy to which the petitioner was appointed, was a regular vacancy and not a temporary vacancy for two years as claimed by the respondents. The petitioner has not produced any staff fixation order or any other evidence to show that there was a regular vacancy on the date of his appointment. On the other hand the respondents have categorically stated that for the year 1992-93 there was a division fall with consequent reduction of one post and therefore the vacancy which arose consequent upon the promotion of Smt. K. Nalini could not have been filled up. The petitioner relies heavily on paragraph 4 of the counter affidavit filed by the 1st respondent, which reads thus:

> "4. It is submitted that nothing has been mentioned in the appointment order that appointment was made against the 10th post of HSA (Social Studies). According to the subject ratio between Physical Science, Natural Science, Mathematics and Social Studies, there should have been 9 Physical Science, 6 HSA Natural Science, 15 HSA Mathematics and 14 HSA (Social Studies). However as on the date of appointment of the petitioner, the classification of High School Assistants working in the school were as shown below.
>
> HSA Physical Science : 9
> HSA Natural Science : 14
> HSA Mathematics : 11
> HSA Social Studies : 9
> ---
> 43
> ======"

The petitioner also relies on the requirement of maintaining subject ratio in the three subjects

5. The question of ascertaining the subject ratio does not arise here since all the other teachers are existing teachers as against whom the petitioner cannot have any claim. The petitioner cannot claim that in order to satisfy subject ratio one of the existing teachers should be sent out and the petitioner should be appointed in his place, which is what the petitioner seeks, effectively. The petitioner can raise such a contention only if another man is being appointed as Mathematics teacher or Science teacher without satisfying subject ratio in Social Studies. Here although till 1992-93 there were 44 posts on account of division fall, the same was reduced to 43, therefore, as on the date of appointment of the petitioner there was no vacancy to which he could have been accommodated. The question of fulfilling the subject ratio therefore does not arise because there is no appointment in violation of the subject ratio although going by the existing strength the subject ratio may not exist. For fulfilling the subject ratio the question of sending out an existing teacher to accommodate the petitioner who is not yet appointed as a teacher does not arise. There was no vacancy to which the petitioner could have been accommodated as on 18.8.92 namely the date of the petitioner's appointment. Of course, the petitioner relies on the

decision of **Cheiran V. State of Kerala [1990 (2) KLT 481]** in support of his contention on the basis of subject ratio. The question of fulfillment of the subject ratio is not an issue at all arising in this case. The only issue arising is as to whether there is an existing vacancy available for accommodating the petitioner on 18.8.92. The petitioner could not satisfy me that there was such a vacancy and he could not satisfactorily controvert the contention of the respondents that for the year 1992-93 there was a division fall with consequent reduction of one post and therefore filling up of the post which arose on account of promotion of Smt. Nalini does not arise at all. That being so, it is abundantly clear that the petitioner was accommodated only against the post sanctioned for the years 1992-93 and 1993-94 as per G.O.(Rt)No.560/95/G.Edn. Dated 17.2.95 with effect from 18.8.92. Further the facts themselves amply shows that the petitioner was not appointed against the vacancy on account of promotion of Smt. Nalin. If the petitioner was appointed against the vacancy which arose on account of promotion of Smt. K. Nalini, the petitioner could have been appointed with effect from 1.6.92 as the promotion of Smt. K. Nalini was with effect from 1.4.92. Therefore clearly the petitioner was appointed against the temporary vacancy subsequently sanctioned. The post to which the petitioner was accommodated being a temporary post for two years, going by Rule 49 of Chapter XIVA of the K.E.R., the petitioner is not clearly entitled to vacation salary.

Therefore, the petitioner's claim for vacation salary for the year 1992-93 is clearly unsustainable.

6. Of course, the petitioner has got another contention that the petitioner is entitled to salary from 15.7.1994 to 14.7.1995. However, that claim is hopelessly belated in so far as the petitioner has not raised any such claim for all these years till filing of this writ petition although there is a vague mention of the same in Ext.P3 revision application. Ext.P3 revision application being only against Ext.P2, that should be confined only to the subject matter of Ext.P2. Therefore, I am not inclined to consider the claim of the petitioner in this regard at this belated stage, for which unduly long delay the petitioner does not even offer any explanation.

For the above reasons I do not find any merit in the original petition and accordingly, the same is dismissed.

S. SIRI JAGAN, JUDGE.

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